

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 21, 2017**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP1949-CR**

**Cir. Ct. No. 2014CF3263**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**KEITHANY MARTEASE BRODIE,**

**DEFENDANT-APPELLANT.**

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APPEAL from judgments and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Brennan, P.J., Brash and Dugan, JJ.

**Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

¶1 PER CURIAM. Keithany Martease Brodie appeals judgments convicting him of first-degree intentional homicide by use of a dangerous weapon, armed robbery, and felon in possession of a firearm. Brodie argues that the circuit

court misused its sentencing discretion because it failed to explain why it made him eligible for parole after fifty-six years of imprisonment and why it deviated from the recommendations of the parties as to his parole eligibility. Brodie also argues that the circuit court misused its discretion by failing to adequately explain why he was ordered to serve a consecutive sentence on one charge. We affirm.

¶2 On July 20, 2014, Brodie killed the victim during an armed robbery while the victim was out celebrating his birthday with friends. Brodie followed the victim outside a tavern to rob him and shot him six times in the back as the victim attempted to run from the scene. While the victim was on the ground bleeding to death, Brodie took money and jewelry from him. Brodie entered a guilty plea to felon in possession of a firearm, and was convicted of the other two charges after a jury trial. Brodie filed a postconviction motion, which the circuit court denied by order dated September 21, 2016.

¶3 Our standard of review is well settled. Sentencing lies within the circuit court's discretion, and appellate review is limited to considering whether discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. A circuit court properly exercises its discretion when its decision shows “a process of reasoning” based on the facts of record and the relevant law. *Id.*, ¶3. The circuit court should “specify the objectives of the sentence ... [which] include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others.” *Id.*, ¶40. Additionally, the circuit court must explain the link between the sentencing objectives and the sentence imposed based on the factors applicable to the particular defendant's situation. *Id.*, ¶46. These factors include the defendant's past criminal record, the defendant's history of undesirable

behavior patterns, the defendant's character, the defendant's age, and the defendant's need for close rehabilitative control. *Id.*, ¶43 n.11.

¶4 Brodie first contends that the circuit court did not adequately explain why it made him eligible for parole after he served fifty-six years of imprisonment. *Gallion* explains that “the exercise of discretion does not lend itself to mathematical precision” and the circuit court need not provide an explanation for the precise number of years chosen, as long as the circuit court gives “an explanation for the general range of the sentence imposed.” *Id.*, ¶49. Here, the circuit court's decision, albeit sparse, did just that.

¶5 The circuit court focused on the violent and senseless circumstances of the homicide. The circuit court noted that Brodie shot the victim in the back six times as the victim tried to run away, and Brodie took jewelry the victim was wearing and other items from the victim's pockets as he was dying. Characterizing the crime as senseless and opportunistic, the circuit court said that Brodie's actions evinced callousness and depravity that showed a total disregard for human life. The circuit court also considered Brodie's prior criminal record and his probation failures. The circuit court concluded that Brodie *was a dangerous person who deserved to be incarcerated for life* because this type of behavior could not be tolerated in a civilized society.

¶6 The circuit court's decision reflects a process of reasoning based on the facts of the case and the applicable law. The circuit court explained why it chose to ensure that Brodie would spend the vast majority of his life behind bars before he was eligible for parole. The circuit court did not misuse its discretion.

¶7 Brodie next argues that the circuit court did not adequately explain why it deviated upward from the recommendation of both the State and the

defense regarding his parole eligibility. The State recommended that Brodie be made eligible for parole after forty-five years of confinement, while the defense recommended that Brodie be made eligible for parole after twenty years of confinement. The circuit court is not required to “adopt sentencing recommendations from any source,” *see State v. Trigueros*, 2005 WI App 112, ¶9, 282 Wis. 2d 445, 701 N.W.2d 54, and there is no legal authority for the proposition that it is required to explain why it deviated from a particular sentencing recommendation. Therefore, we reject this argument.

¶8 Finally, Brodie argues that the circuit court did not adequately explain why he was ordered to serve his conviction for felon in possession of a firearm consecutively, while the other two charges were imposed concurrently. The circuit court has “wide discretion in determining whether to impose a concurrent or consecutive sentence.” *State v. Davis*, 2005 WI App 98, ¶27, 281 Wis. 2d 118, 698 N.W.2d 823. The circuit court is not required to separately explain why it imposed consecutive rather than concurrent sentences as long as it explains the “relevant and material factors” that influenced the decision. *State v. Berggren*, 2009 WI App 82, ¶45, 320 Wis. 2d 209, 769 N.W.2d 110. The circuit court explained that it was imposing the sentence for felon in possession of a firearm consecutively because Brodie had a prior criminal history involving carrying a weapon. The circuit court’s explanation was sufficient to support its decision to treat this charge differently than the other two charges. The circuit court did not misuse its discretion.

*By the Court.*—Judgments and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2015-16).

